IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

WP(C).No. 1127 of 2004(S)

OA.1293/2000 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:
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1. UNION OF INDIA, REPRESENTED BY THE SECRETARY TO GOVERNMENT OF INDIA MINISTRY OF AGRICULTURE, KRISHI BHAVAN, NEW DELHI.

2. THE JOINT SECRETARY, DEPARTMENT OF ANIMAL HUSBANDRY & DAIRYING MINISTRY OF AGRICULTURE, KRISHI BHAVAN, NEW DELHI.

3. THE DIRECTOR, INTEGRATED FISHERIES PROJECT, KOCHI-16.

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

RESPONDENTS:

G.THANKAPPAN PILLAI, SKIPPER (UNDER ORDERS OF REVERSION) INTEGRATED FISHERIES PROJECT, KOCHI-16.

BY ADV. SRI.M.R.RAJENDRAN NAIR (SR.)
SMT.VINEETHA B.
SMT.SHANCY BABY
SRI.M.R.HARIRAJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 1127/2004 s

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER BY CAT, ERNAKULAM BENCH ON 26/09/2003 IN OA NO. 1292 ABD 1293/2000.

EXT.P2. COPY OF THE JUDGMENT OF DIVISION BENCH OF THIS COURT PASSED IN OP NO. 20205/00 BY THE RESPONDENT.

EXT.P3. COPY OF THE MINUTES OF THE MEETING OF THE DEPARTMENT PROMOTION COMMITTEE HELD ON 17/10/00 AT KRISHI BHAVAN, NEW DELHI AND ON 7/11/00 AT KRISHI BHAVAN, NEW DELHI.

EXT.P4. COPY OF THE ORIGINAL APPLICATION NO. 1293/00 WITH ANNEXURES.

EXT.P5. COPY OF THE REPLY STATEMENT SUBMITTED BY THE PETITIONER HEREIN BEFORE THE CAT.

RESPONDENT'S EXHIBITS

EXT.R1A. COPY OF THE REJOINDER DT. 22/6/01 FILED BY THE RESPONDENT IN OA NO. 1293/00 BEFORE THE CAT, ALONG WITH ANNEXURES THEREOF.

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.1127 of 2004-S

Judgment

Balakrishnan Nair, J.

The petitioners are the respondents in OA No.1293/00 filed by the respondent herein, before the CAT, Ernakulam Bench. The brief facts necessary for the disposal of the case are the following :

2. The respondent was a Bosun, working in the CIFNET since 1983. When the respondent became a surplus hand in that organisation, he was transferred to Integrated Fisheries Project on 11.07.1994 as Bosun. He was regularised in that post in the Integrated Fisheries Project with effect from 11.07.1994. Later, he was promoted as Skipper on 10.06.1996, based on the decision of the DPC held on 08.06.1996. Two of his seniors challenged the promotion of the petitioner before the CAT. One of the OAs was allowed and the other was dismissed. Both the orders were taken up before this Court. Finally, as per the direction of this Court, the DPC reconsidered the claims of the incumbents, including the respondent herein. The said DPC was reconstituted, taking note of the defect in the earlier DPC, which was found to be not constituted in accordance with the Recruitment Rules. The fresh DPC

did not find any of the incumbents eligible for promotion and therefore, the applicant was reverted from the post of Skipper to the post of Bosun. Challenging the said order, the respondent herein filed Ext.P4 OA before the CAT. Annexure A1 is the reversion order produced along with Ext.P4.

3. The petitioners herein, who were the respondents in the OA filed a reply statement, contending that the respondent herein does not have the requisite years of service for promotion. His service in the Integrated Fisheries Project alone could be counted. Further, the service rendered by him in the CIFNET is only ad hoc service, it was contended. The other rival claimants, who were seniors of the petitioner, were not considered suitable for promotion having regard to their entries in the annual confidential reports. The respondent has filed a rejoinder to the above stand taken in the reply statement. Ext.P5 is the reply statement and Ext.R1(a) is the rejoinder statement.

4. The main point that was canvassed before the CAT by the respondents was that the petitioner does not have the qualifying service in terms of the Rules and therefore, his promotion was rightly set aside and he was reverted. In other words, the review DPC correctly found him ineligible for promotion, it was contended. The applicant pointed out that he was enjoying all

the benefits applicable to the regular employees in the CIFNET. Though he was termed as an ad hoc employee, for all practical purposes he was treated as a regular employee. He was being granted increments and Leave Travel Allowance and his confidential records were maintained. All other service conditions applicable to regular service were also extended to him. The CAT accepted the above contentions of the petitioner and held that the service rendered by the respondent herein in CIFNET cannot be treated as wanting in any respect and should be treated as regular service for the purpose of promotion. The second aspect canvassed by the respondents against the petitioner was that his service in IFP alone could be counted. But the said stand of the respondents therein, who are the writ petitioners, was overruled by the CAT relying on the decisions of the Apex Court in **Renu Mallick v. Union of India** (1994) 1 SCC 373) and **Dwijen Chandra Sarkar v. Union of India** (1999(2) SCC 119). In the first case, the incumbent obtained inter-unit transfer in the same department, namely, the Central Excise Department to the post of UDC and joined as junior to the juniormost in the transferee unit. The point that arose for decision was whether the past service rendered by her could be counted for the purpose of promotion. The Apex Court held that she can get

seniority only with effect from the date she joined the unit, but when her turn comes for promotion according to her seniority, the past service can also be reckoned without affecting her senior. The second decision was the case of an incumbent who was appointed to a different organisation on being rendered surplus in the organisation in which he was working. In that case also, the Apex Court held that the incumbent would get seniority only with effect from the date he joined the unit, but his past service could be counted for the purpose of grade promotion without affecting the seniority of his seniors in service. Relying on the above two decisions of the Apex Court, the Tribunal held that the respondent's past service in CIFNET can also be reckoned for the purpose of promotion.

5. The learned counsel for the petitioners challenged those two findings of the Tribunal. According to the learned counsel, the service in CIFNET cannot be counted. It is pointed out that the decisions relied on by the Tribunal deal with regular service in another unit or another organisation. So, the principles laid down therein cannot be made applicable to the facts of this case, it is pointed out. So, the petitioners pray for allowing the Writ Petition and quashing the order in the OA.

6. We heard the learned counsel for the respondent herein, who was the applicant before the CAT. He supports the conclusions of the Tribunal. On the facts of the case, we feel that though the respondent was termed as an ad hoc employee, he was a regular employee defacto. He was getting all service benefits. If the CIFNET decided to regularise the ad hoc employees and the respondent was continuing there, he would also have got regularisation. But before that, he was rendered surplus and had to join the IFP. So, the view taken by the Tribunal that the service of the applicant can be treated as regular service is a plausible view on the facts, which cannot be described as perverse and therefore, this Court cannot interfere with the same under Article 226 of the Constitution of India. Regarding the second aspect, we feel that the respondent can be considered only in the regular vacancy that arose after he joined the IFP. Further, any claim of a senior of the petitioner in service cannot be overlooked for the reason that the said senior has not acquired the requisite qualifying service and the petitioner cannot be allowed to steal a march over any senior available in the IFP, who was not able to complete the required years of service when the vacancy arose. So, we sustain the order of the

Tribunal to consider the case of the petitioner for promotion, reckoning his past service also, subject to the condition that no senior of the petitioner in service shall be overlooked in the matter of promotion before the said senior gets a chance to complete the prescribed years of qualifying service required for promotion.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

04.10.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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